IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPEALLTE JURISDICTION.

CRIMINAL APPEAL NO. 520 OF 1997

The State of Maharashtra..... ....Appellants.
(Orig.Complt..)

V/s

1.Namdev Nana Yamgar
2.Vilas Namdev Yamgar
3.Dadaso Namdev Yamgar
4.Bapu Ganu Katare
5.Shivaji Vithoba Katare... .... Respondents.
(Orig.Accd.Nos.1 to 5)

Mr.A. M.Shrigarpure, APP for the State.

Mr.Umesh Mankapur, Adv. for the respondents.

CORAM: V.G. PALSHIKAR
AND
R.C. CHAVAN, JJ.

30th June, 2005.

ORAL JUDGMENT: (Per Palshikar, J.)

Being aggrieved by the judgment and order of acquittal passed by the learned II Additional Sessions Judge, Sangli in Sessions Case No.246 of 1995 on 30.12.1996 the State has preferred this appeal on the grounds mentioned in the memo of appeal as also verbally canvassed before us.

2. With the assistance of the learned Public Prosecutor and the learned Advocate for the respondents we have scrutinized the entire evidence on and reappreciated the same.

3. The prosecution story stated briefly is that all the accused on 12.8.1995 at about 8.30 p.m. In the land bearing Gat No.1467 of village Kosari, formed an unlawful assembly with common object to commit murder of Maruti Sidu Katare, father of P.W.2-Abasaheb and also at the same time to cause hurt to P.W.2-Apasaheb in prosecution of their common object of the unlawful assembly and committed the offence of rioting. It is also alleged that during this period, all the accused were members of an unlawful assembly with the common object aforesaid and at the same time were armed with stones, sticks which were used as weapon to commit an offence likely to cause death. It is also alleged that during the period aforesaid, all the accused were members of an unlawful assembly and in prosecution of the object mentioned aforesaid caused death of Maruti. This was the complaint on the basis of which investigation was undertaken by the police and the accused persons were prosecuted. The prosecution examined eight witnesses to prove its case. The defense of the accused being of total denial they examined two witnesses to prove that they were not the persons involved in the assault complained of. The learned trial Judge has considered the evidence of all the six witnesses and has given his

reasons for coming to the conclusion that the prosecution has failed to discharge its duties of proving the guilt of the accused persons beyond reasonable doubt.

4. In this case the prosecution alleges formation of unlawful assembly and assault in pursuance of the common object of that unlawful assembly. But the entire evidence as led by prosecution falls miserably short of requirements of proving the unlawful assembly with common object. Merely because five or more persons have gathered together and an assault is alleged it cannot be necessarily be inferred that the assault was the object of the assembly and therefore it was unlawful assembly and the assault was the common object. The evidence of the prosecution witness falls short in this regard.

5. We are in full agreement with the reasoning and findings given by the learned trial Judge. Since we are agreeing with the judgment of acquittal and we agree with the findings as recorded by the learned trial Judge, in our opinion, it is not necessary to narrate again what is the prosecution evidence, what are our comments thereon and give reasons for agreeing with the learned trial Judge who has acquitted the accused persons. It is an established proposition of law that where an appellate authority concurs with the finding of the trial Court it need not give elaborate reasons for agreeing with the findings of the trial Court. The learned trial Judge has considered the entire evidence on record. He has appreciated the same and has given reasons for finding that there was no unlawful assembly. We are in agreement with these reasoning and findings.

We endorse the same. In the result therefore appeal fails and is dismissed.